

CHAPTER 14 ENVIRONMENTAL COVENANTS

567—14.1(455B,455H) Definitions. The definitions in 2005 Iowa Code Supplement section 455I.2 are incorporated by reference. In addition, as used in this chapter:

“*Department*” means the Iowa department of natural resources.

“*Director*” means the director of the Iowa department of natural resources.

“*Source site*” means the property(ies) on which the source(s) of contamination exists and which extends to or has a causal relationship to the area of concern subject to the terms and conditions of the environmental covenant.

567—14.2(455B,455H) Environmental covenants. A person requesting department approval of an environmental covenant is responsible for the preparation and submittal of a draft environmental covenant using a model form(s) and model language developed by the department and submittal of supporting documentation. The department will grant presumptive approval to environmental covenants which conform to department model forms and model language. The parties to the environmental covenant may propose revisions to the model language and model form by clearly noting any proposed revisions and making a written request for consideration and approval. The department recommends that the activity and use limitation language in the environmental covenant conform to model language developed by the department.

567—14.3(455B,455H) Supporting documentation. Supporting information and documentation shall be submitted with the proposed environmental covenant. Supporting documentation must be sufficient for the department to determine the legal capacity of all legal and equitable interests in the property, to verify the accuracy of the legal description of the affected property and its relationship to the contaminated area of concern, and to ensure that all legal and equitable interests necessary to establish a valid and enforceable environmental covenant have been accurately identified. Documentation shall include, but not be limited to:

14.3(1) An opinion which is prepared by an attorney and which represents that sufficient research has been conducted to identify all persons with a recorded interest in the affected property and other legal and equitable interests necessary to establish a valid and enforceable covenant free of any competing or subordinate property interests. Persons other than an attorney may submit supporting documentation in accordance with department guidance developed to assist them in conducting property interest research and identification of all legal and equitable interests necessary to establish a valid and enforceable covenant. The department may require on a case-by-case basis that an attorney prepare the covenant and supporting documentation and that an abstract of title be prepared or updated when necessary to identify and confirm all legal and equitable interests necessary to establish a valid and enforceable covenant. Property interests which must be identified include, but are not limited to, fee title and equitable titleholders (i.e., contract sellers and buyers), lessees of the property, and consensual lienholders such as mortgagees.

14.3(2) Copy of a current deed, contract for deed, or other property transfer instrument verifying the person(s) or business entity(ies) holding fee and equitable title in the property subject to the covenant. Proof of the legal capacity of other equitable interests and signatories to the covenant must be documented by provision of a copy of the applicable real estate instrument such as a mortgage or other consensual lien instrument.

14.3(3) A plat map or other official document which accurately depicts the boundaries of the affected property by legal description and as legally described in the environmental covenant. The map must be adequate to verify the relationship of the legally described property subject to the environmental covenant to (a) the contaminant source(s) areas, (b) the source site(s) subject to regulation such as an underground storage tank site, (c) the contaminated area of concern to which the terms of the environmental covenant are intended to apply, and (d) other adjoining or affected properties.

567—14.4(455B,455H) Recording and approval. An environmental covenant shall be recorded as provided in 2005 Iowa Code Supplement section 455I.8. An environmental covenant shall not be recorded without the approval and written signatures of the director or the director's appointed designee and all designated signatories. Signatures shall not be obtained on an environmental covenant until the environmental covenant and all supporting documentation have been reviewed and approved by the department.

567—14.5(455B,455H) Mandatory provisions. The environmental covenant shall contain provisions which adequately address the subject areas designated in 2005 Iowa Code Supplement section 455I.4(1). The language to address these mandatory provisions is contained in the department's model forms but may be revised as provided in rule 567—14.2(455B,455H). The environmental covenant and any other accompanying documents shall satisfy the formatting and recording requirements of Iowa law and specifically Iowa Code section 331.606B. All environmental covenants must have a proper signature acknowledgment as provided in Iowa Code sections 9E.14 and 9E.15. In addition to these mandatory provisions, the environmental covenant shall contain provisions that require any signatory to the environmental covenant to notify the department of conditions which would constitute a breach of the activity and use limitations contained in the environmental covenant.

567—14.6(455B,455H) Optional provisions. On a case-by-case basis, the department may require additional provisions in the environmental covenant within the subject areas authorized in 2005 Iowa Code Supplement section 455I.4(2) and otherwise within the department's authority. These provisions may include, but are not limited to:

14.6(1) A provision which requires a standard disclosure in a groundwater hazard statement in accordance with Iowa Code section 558.69 and department rules in 561—Chapter 9. A standard notice could be required if the department or the grantor determines that the property subject to the covenant constitutes a solid waste disposal site which is potentially hazardous or if hazardous waste exists on the property as provided in Iowa Code section 558.69.

14.6(2) A provision which requires notice to the department of any transfer of legal or equitable title in the property, notice of the establishment of a long-term lease, or notice of substantial change in use of the property subject to the environmental covenant. This provision may be added when the department finds the need to monitor compliance with and maintenance of the activity and use limitations and when the risks to health, safety and the environment warrant a higher degree of oversight.

14.6(3) A provision which places affirmative duties on subsequent transferees of equitable or legal title in the property or long-term lessees to inspect, monitor and report on conditions and continued compliance related to the activity and use limitations at the property subject to the environmental covenant. This provision may be added when the department finds the need to monitor compliance with and maintenance of the activity and use limitations and when the risks to health, safety and the environment warrant a higher degree of oversight.

567—14.7(455B,455H) Modification and termination. Modification or termination of the environmental covenant shall be in accordance with 2005 Iowa Code Supplement chapter 455I and the terms of the environmental covenant.

567—14.8(455B,455H) Signatories to the environmental covenant.

14.8(1) Agency. The department will generally not be a “holder” as defined in 2005 Iowa Code Supplement section 455I.2(7) and will generally sign the environmental covenant as an “agency” as defined in 2005 Iowa Code Supplement section 455I.2(2), without taking an interest in the property as provided in 2005 Iowa Code Supplement section 455I.3(2). However, the department reserves the right to sign as a holder on a case-by-case basis when it determines that holding an interest in the property is beneficial to satisfying the regulatory objectives of the environmental covenant.

14.8(2) Holders. The fee title owner of the affected property is required to sign the environmental covenant in the capacity as a grantor and may be required to sign as a holder/grantee as provided in 2005 Iowa Code Supplement section 455I.2(7) if necessary to establish a valid instrument. A contract buyer holding equitable title is required to sign as a holder. When the grantor of the environmental covenant is not the owner of the source site subject to regulation, or is not the person or entity responsible for conducting corrective action at the source site, the department may require the owner of the source site, a person or entity that is the party responsible for corrective action or the person or entity that has conducted the corrective action at the source site to sign on to the environmental covenant as a holder. The department may require a participant in an enrolled site regulated under 567—Chapter 137 to sign the environmental covenant as a holder if the participant has an interest in ensuring compliance with the terms of the environmental covenant and particularly if the participant has responsibility for corrective action or has undertaken corrective action at the enrolled site.

14.8(3) Subordinated interests. As provided in 2005 Iowa Code Supplement section 455I.3, all equitable or other property interests affected by the environmental covenant must consent to and subordinate their interests to the environmental covenant either by signing it or by signing a separate subordination and consent agreement approved by the department. These interests include, but are not limited to, lessees, mortgagees and other consensual lienholders.

567—14.9(455B,455H) Notice. In accordance with 2005 Iowa Code Supplement section 455I.7, persons requesting approval of the environmental covenant shall certify that copies of a recorded environmental covenant have been sent to:

1. Each person signing the environmental covenant.
2. Each person holding a recorded interest in the property subject to the environmental covenant but which is not a signatory.
3. Each person in possession of the property subject to the environmental covenant, including lessees, sublessees, assignees of a lease, and current owners and operators of the business assets on the affected property.
4. Each municipality or other unit of local government in which the property subject to the environmental covenant is located. The department may identify the appropriate official or specific unit of government depending on the applicable activity and use limitations specified in the environmental covenant.
5. Each current owner or operator of the underground storage tank to which the environmental covenant relates.
6. Any other person which the department designates, including an adjoining property owner.

These rules are intended to implement Iowa Code sections 455B.474 and 455H.105 and 2005 Iowa Code Supplement chapter 455I.

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